

JERSEY / JUDGMENT

The Attorney General v Robert Adrian Canavan

COURT

Royal Court

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Superior Number Sentencing - grave and criminal assault - possession of an offensive weapon.

[2024]JRC052

Royal Court

(Samedi)

28 February 2024

Before :

Sir William Bailhache, Commissioner, and
Jurats Dulake, Averty,
Hughes, Opfermann and Entwistle.
The Attorney General

-v-

Robert Adrian Canavan

Sentencing by the

Superior Number of the Royal Court, following guilty pleas to the following

charges:

1 count of:

Grave and criminal assault (Count 1).

1 count of:

Possession of an offensive weapon contrary
to Article 41(1) of the Firearms (Jersey) Law 2000 (Count 2).

Age: 29.

Plea: Guilty.

Details of Offence:

In the run up to the offences, the Defendant was chasing the victim for non-payment of a drugs debt via telephone communication. On 3 September 2023 the Defendant, who had been drinking, attended his partners address which is on the same estate as the victim's home address. The Defendant had an argument with his partner and left her property to go home. On the way he walked past the victim's home address and an argument broke out. The Defendant stated he was chased away from the estate by the victim and two other associates who attacked him with knives. The Defendant went back home and armed himself with two knives and returned back to the estate where his partner and the victim lived. During that time he sent threatening messages to the victim and messaged his partner to tell her he was "prepared" and was returning to the victim's house to confront him. The Defendant returned to the victim's home and was seen shouting outside but the victim refused to come out. The Defendant then tried, unsuccessfully, to gain access to his partner's house. He ordered a taxi to take him home. However when the taxi arrived, he remained in the taxi for less than a minute and jumped out of the taxi when he reached the victim's house. The Defendant began shouting to the victim again who exited his house on this occasion and a fight broke out. A neighbour witnessed the fight but was unable to say whom attacked whom first. During the fight, the victim cut the Defendant causing a laceration across the Defendant's face and the Defendant stabbed the victim twice to the torso. The injury to the chest had been superficial and had not damaged the underlying lung. The stab wound to the top of the stomach had injured the liver resulting in the victim having open abdominal surgery and time in the Intensive Care Unit. Defendant initially entered an unequivocal guilty plea but later submitted a basis of plea, which the Crown did not accept. The Defendant denied bringing the knives to the fight in which he committed the grave and criminal assault and stated the victim brought these knives to the fight and, when he dropped them, the Defendant picked one of the knives up and stabbed him in response to being cut on his face. A Newton Hearing was heard and the Jurats found the Crown had proved its facts and the Defendant had brought two knives to the fight and used those knives to stab the victim. Aggravating features were that the Defendant had been drinking alcohol and that it was a premeditated fight. Furthermore, the fight had arisen because of a drug debt. Probation assessed the Defendant as

	high risk of causing harm to the public.
Details of Mitigation:	The Court could not be sure whether the Defendant struck first or whether the victim struck the Defendant first. The court therefore sentenced on the basis the Defendant had been struck first and had stabbed the victim randomly after being attacked, rather than the Defendant carrying out a deliberate aimed blow.
Previous Convictions:	29 previous convictions, including possession of an offensive weapon in a public place, possession of a prohibited weapon, three convictions for offences against the person and four convictions for public disorder offences.
Conclusions:	
Count 1:	7½ years' imprisonment.
Count 2:	2 years' imprisonment, concurrent. Total: .7 years and 6 months' imprisonment. Forfeiture and destruction of the knives sought.
Sentence and Observations of Court:	
Count 1:	7 years' imprisonment.
Count 2:	2 years' imprisonment, concurrent to Count 1). Total: 7 years' imprisonment. Defendant sentenced on the basis that he was struck first by the victim. Forfeiture and destruction of the knives ordered. Crown Advocate C. Hall for HM Attorney General. Advocate O. A. Blakeley for the Defendant.

JUDGMENT

THE commissioner: 1. Mr Canavan you are here to be sentenced on one count of grave and criminal assault and one count of being in possession of an offensive weapon in a public place, namely two knives. The offences were committed at approximately 10:20 pm on 3 September 2023. You indicated early on that there would be a guilty plea and in fact entered that plea on Indictment on 10 November 2023 when a sentencing date before the Superior Number was set for 18 December

2023. On 13 December 2023 you successfully applied for a postponement of that hearing on the grounds that there was a basis of plea which the Crown did not accept and that a Newton Hearing was necessary, that took place before the Court on Monday and Tuesday this week.
2. The circumstances of the assault were these: you were at that time in a relationship with

a woman who lived at an estate some five doors away from where the victim lived with his father. In describing [Name redacted] as (“the victim”) we do not discount the possibility or indeed probability that the victim is also guilty of a grave and criminal assault on the same occasion. It has not been clear from what has been said so far – indeed it is a mystery to us as to why he has not been charged. 3. At all events, at approximately 9pm on 3 September 2023 you went to your girlfriend’s house. You had had an argument earlier in the day and either she was not there, or she would not let you in. Approximately an hour later at about 10 pm you called a taxi which collected you from outside her house but after moving only some 50 yards you procured the taxi to stop. You got out and went to the victim’s house, called for him to come out and see you. 4. You had two arguments to pick with him. The first was that you claimed he owed you money in respect of what the Newton Court was satisfied was a drugs debt and the second was that earlier in the evening when pressing him for payment of the money he and two of his friends had set upon you, assaulting you with kicks causing you to fall to the ground and threatening you. You told the police that they each had a knife, and they were pushing and shivving or cutting you. That account is not inconsistent with the medical report on you which was performed later that evening. 5. Eventually the victim did emerge from his house and in the fracas that followed, both you and he were to suffer significant stab wound injuries. In particular you suffered a 90-millimetre wound from the top left-hand side of the head to the visible portion of the left ear and a 140-millimetre wound from the left temple to 20-millimetres away from the left corner of the mouth. You continue to suffer some effects of those wounds. 6. The victim suffered a superficial stab wound to the chest which has not damaged the underlying lung but also a stab wound to the top of the stomach which injured the liver. That injury required him to have an open abdominal surgery and the liver wound was sutured and packed. He was cared for in the Intensive Care Unit which suggests a high level of concern for his clinical state. There is no evidence that he has suffered any lasting injury or damage, however. 7. After the fight the victim returned to his bed. The medical evidence is that if the liver wound had not been investigated and treated his condition would have deteriorated due to blood loss. Indeed an untreated liver injury could result in death due to blood loss although this would depend on the site and depth of the wound. 8. The Newton Hearing was necessary because the basis of your guilty plea was this: “[The victim] came out of his house and was acting aggressively towards the Defendant and was brandishing a knife and waving it back and forth. As he did so he dropped it and the Defendant reached down to pick up the knife and as he did so he felt a blow to the side of his head and severe pain. He did not fully comprehend that he had been savagely attacked by [the victim] with what the Defendant describes as a machete, but which was probably a very large knife. As he regained balance and control the Defendant stabbed [the victim] to the torso twice” That ends the citation from your basis of plea. 9. This account differed markedly from the Crown’s summary which was to the effect that you had deliberately armed yourself with two knives and gone to the estate that evening. As a result the Crown’s case was that this was a premeditated assault, a revenge assault for the non-payment of the drugs debt and for the assault committed upon you earlier in the day. 10. After hearing evidence, the Newton

Jurats concluded that they were sure that the Crown's case was the accurate account. The primary reasons for this were the two silver knives found at the scene, which an eyewitness had seen you throw into a bush, had the same pattern matching each other and it followed that there was a high probability that they had been in the possession of the same person. 11. Secondly there was no likelihood of you going unarmed to showdown with the victim and possibly with his two friends. On your account all had earlier been armed with knives. 12. Thirdly, the Facebook and text messages sent by you to the victim and to your girlfriend at the time, all supported the view that you intended to have it out with your victim and had gone prepared for a fight, and one them explicitly states that you were, and I quote, "I'm gunner cut your neck." 13. The basis of the plea was considered to be inherently incredible because on the assumption that the two knives had been in the victim's possession and not in yours it is likely that the independent witness would have seen him carrying at least one of them. You, yourself also told the police that you had not been cut by either of them so that if a third knife had been used there was no basis on which the victim would have had both these two knives in his possession at the same time and there is no apparent reason why the victim would have come out with two knives and then just happened to drop one in front of you while the third knife which was apparently the knife which cut you appeared out of thin air. So the Newton Jurats found that you should be sentenced on the Crown's version of events and this is the approach the Court has taken; and we have noted that despite the Newton Hearing being prompted by your basis of plea you now accept that the finding of the Newton Jurats was in fact the correct position. 14. Your offending is aggravated by the fact that you were under the influence of alcohol at the time. This is not the first time you have been in court charged with offences of this kind. You have two previous convictions in 2013 and 2022. Two previous convictions for possession of an offensive weapon in a public place in 2015 and 2019 and on the later occasion you presumably used the weapon because there is a concurrent sentence for an assault occasioning actual bodily harm. There was a further offence of possessing a prohibited weapon in 2021. Some of these offences were clearly not as serious as others as they were dealt with by Magistrate's Courts, but the 2019 offences resulted in you serving a sentence of 18 months' imprisonment. 15. We do not regard the assaults on you nor the threats which were made against you earlier in the afternoon as provocation which operates in your favour. After this had taken place, as the Newton Jurats announced yesterday, you had a choice. You could do what you did, or you could take time to compose yourself and stay away. You did not have to take up the matter of the drugs debt nor indeed is the court of the view that you should have any credit for the fact that the victim did not pay you for substances which you had illegally provided to him. We do consider that you are due to some credit for your guilty plea albeit some of that has been lost by the need for a Newton Hearing. We also consider that you are entitled to credit for the cooperation in the police enquiry to the extent that you gave them the PIN code for your telephone. 16. We have taken into account the contents of the pre-sentence report, the injury you have suffered, the long-term effects of which are not known, and your regret for the impact your behaviour has had on your wider family. You have a good work record and have been using

your time productively in prison on remand, and indeed that last is important because you are assessed as having a high risk of re-conviction and the more you can equip yourself for life outside while serving this sentence the better it will be for you. 17. We have taken into account all your counsel has said on your behalf and we have considered the references from your sister and your mother and your letter of remorse. We do not think, notwithstanding the suggestion from your counsel, that you are entitled to any credit for youth. 18. I now will come to consider just the Harrison factors in a little more detail: - 19. The first is the nature of deliberation with which the assault was carried out. In our view we should regard it as pre-meditated in the sense that you took the knives with you. You must therefore have been ready for a knife fight and to some extent whether you struck the first blow or not is therefore not material. Furthermore, the text messages which you sent at the time show that you had intended to carry out an assault with the knife. As the Crown say you had plenty of time to consider whether to have that further altercation with the victim and plenty of time to consider whether or not to carry out the assault. 20. The second is whether the blows were aimed or at random. Our view is that we should treat these as reactive blows rather than aimed because you have the benefit of the doubt as to whether you struck the first blow, or the victim struck the first blow. The Crown say they do not know so we are assuming he did, and in those circumstances, taking account that you must have had the blow to the face, it would be hard to say that you had any aim in the sense of the blows that you struck, and we treat them as being struck at random. As to whether the incident arose from a loss of temper or was committed in cold blood, we do not regard this as an assault committed from a sudden loss of temper because that would be inconsistent with going armed with knives to the fight itself. 21. The degree of force with which the blow was struck: it was sufficiently a forceful blow to have penetrated the abdomen and therefore we assume he will make a full recovery if he has not made one already; but it was a serious and potentially lethal offence because he could have died. As is clear there was not just one weapon involved but two kitchen knives involved, and you armed yourself with them prior to confronting him. 22. There were just you and the victim concerned directly in the assault itself, but it is to be noted that the offence was witnessed by at least one of the victim's neighbours and for all we know maybe more. It took place in public, and it would have been frightening and we are entitled to take into account, and we do, the fact that those near the incident would have been frightened by what took place. 23. As to the nature and extent of provocation I have dealt with that already we do not regard what happened earlier in the day as provocation, and you do have a record of similar offences which I have already mentioned. 24. There is one further point that we wish to make as a general statement and that is this. In many of the cases which are cited, and this is true over the last 15 years, this Court has expressed concern at increasing knife crime. This is a policy matter which the court is entitled to take into account and we do wish on this occasion as previously to send the clearest message to the public that knife crime is treated extremely seriously and will not be tolerated. 25. It is a fact that when you use a knife on someone you do not know how extensive or possibly fatal those injuries might be. You are not in control of the consequences of using a knife and it follows from that you

should not take a knife with you in the first place. If you had not taken the knives with you none of this would have happened. If you had not sent the text messages threatening the victim with cutting him up, he would not have brought a knife out, or so one would like to hope, and if he had and assaulted you then he would expect the same sort of remarks to be made to him on conviction as I am now making to you. We read and therefore it may not be true, but we read in the United Kingdom of the increasing prevalence of knife crime. It seems there to be on the increase and if that is the culture it certainly will not be tolerated here and it plays into the sentence which we are about to impose. 26. As I have said this was a very serious offence. We have been out considering sentence for some time because the Jurats have not been agreed on the extent to which the seriousness should be reflected in the sentence, so the Sentence of the Court now is by a majority. Three Jurats are of the view that the appropriate sentence on Count 1 is 7 years' imprisonment. Two Jurats were of the view it should be 6½ years' imprisonment, but the majority view counts. So will you stand up please. 27. For all these reasons you are sentenced to: (i) Count 1: 7 years' imprisonment, (ii) Count 2: We see no reason to reduce the Crown's conclusions and you are sentenced to 2 years' imprisonment, concurrent, making a total of 7 years' imprisonment. 28. We order the forfeiture and destruction of the knives. Authorities Firearms (Jersey) Law 2000. Harrison v AG [2004] JLR 111. AG v Mawer [2013] JRC116. AG v McCaffrey [2020] JRC 155. AG v Power [2020] JRC 091. AG v Livingstone [2010] JRC 028.

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